

03/22/05

APF \$1200

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Landau et al.

Application No.: 09/595,528

Filed: June 16, 2000

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) Examiner: A. Rudy
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) Art Unit: 3627
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)
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For: **ORDER AND ACCOUNTING METHOD AND SYSTEM FOR SERVICES PROVIDED
VIA AN INTERACTIVE COMMUNICATION NETWORK**

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Respectfully submitted,

Date: **March 18, 2005**

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In re Application of: Landau, et al.
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Art Unit: 3627
Examiner: A. Rudy


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Very truly yours,



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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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By: Carol Prentice
Carol Prentice

APPELLANT'S BRIEF (37 C.F.R. 41.37)

This brief is in furtherance of the Notice of Appeal filed in this case on January 20, 2005.

The fees required under §41.20(b)(2) are accounted for in the accompanying TRANSMITTAL OF APPEAL BRIEF.

This brief contains these items under the following headings, and in the order set forth below (37 C.F.R. 41.37(c)):

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(1) REAL PARTY IN INTEREST

The real party in interest in this appeal is: Osmio Incorporated, a Delaware Corporation having its principal place of business at 437 Madison Avenue, 33rd Floor, New York, New York 10022, the assignee of a 100% interest in the application.

(2) RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences that will directly affect, be directly affected by, or have a bearing on the Board's decision in this appeal.

(3) STATUS OF CLAIMS

The status of the claims in this application is:

A. Total Number Of Claims In Application

There are 27 claims pending in the application. The pending claims are claims 1-27.

B. Status Of All The Claims

1. Claims canceled: 28-54.
2. Claims withdrawn from consideration but not canceled: None
3. Claims pending: 1-27
4. Claims allowed: None
5. Claims objected to: None
5. Claims rejected: 1-27.

C. Claims On Appeal

The claims on appeal are: 1-27.

(4) STATUS OF AMENDMENTS

Applicants mailed an Amendment on March 21, 2003 in response to the February 26, 2003 Office Action. This Amendment was rejected in a Notice mailed on April 7, 2003. A revised Amendment was mailed on April 15, 2003 in response to the April 7, 2003 Notice. Claim 1 was amended by this Amendment, which was entered by the Examiner.

Applicants mailed an Amendment After Final on September 2, 2003 in response to the July 2, 2003 final Office Action. Claims 28-54 were cancelled in this Amendment, which was entered by the Examiner.

Applicants mailed an Amendment, together with a Request for Continued Examination, on October 30, 2003, in response to the Advisory Action mailed on September 11, 2003 and the final Office Action mailed on July 2, 2003. Claim 1 was amended by this Amendment, which was entered by the Examiner.

Applicants mailed an Amendment on April 15, 2004 in response to the Office Action mailed on January 16, 2004. Claims 1 and 21 were amended by this Amendment, which was entered by the Examiner.

(5) SUMMARY OF CLAIMED SUBJECT MATTER

The claimed invention relates to methods for electronic commerce and accounting services, whereby a third party intermediary can handle certain ordering, payment, collection and billing functions on behalf of both (i) an organization whose members desire goods and/or services, and (ii) a plurality of service providers that provide services to members of the organization. Such methods are set forth in Applicants' claims, as follows:

Claim 1: *"A method for providing electronic commerce and accounting services to organizations and service providers for offerings ordered by members of the organizations and delivered by the service providers."*

Referring to Applicants' Figure 2, the present invention provides electronic commerce and accounting services to organizations (e.g., organization 20) and service providers (e.g., service provider 30) for offerings (e.g., products or services) ordered by members (e.g., members or employees 25) of the organizations 20 and delivered (e.g., delivery 32) by the service providers 30. The ordering of services takes place electronically via an interactive communication network 50 and is facilitated by intermediary 15 (see, e.g., Figure 2; and Applicants' specification, page 26, line 24 through page 27, line 9).

The method according to claim 1 comprises the steps of:

"providing said members with online access to a searchable database of said service providers with associated offerings via an interactive communication network, said searchable database being maintained by an intermediary;"

Referring to Applicants' Figure 2, the members 25 of an organization 20 are provided with online access to a searchable database 40 of the service providers with associated offerings via an interactive communication network 50. The searchable database is maintained by the intermediary 50 (Figure 2; specification, page 27, lines 2-11). Communications software 41 and server 42 enable communication with the database 40 (Specification, page 27, lines 9-11).

“enabling the members to electronically select a service provider from the database;”

Once a member 25 accesses the database 40 via the interactive communication network 50, the member is able to select a service provider 30 from the service providers stored on the database 40 (specification, page 27, lines 11-13).

“enabling the members to electronically select offerings from the selected service provider via the database;”

After selecting a service provider 30, the member 25 can electronically select an offering or offerings from the service provider 30 stored on the database 40. In other words, the database 40 contains a listing of service providers 30, as well as a listing of offerings (goods and/or services) offered for sale by each service provider 30 (specification, page 27, lines 13-14).

“enabling the members to electronically communicate the selected offerings and billing information for payment of the selected offerings to the intermediary;”

The offerings selected by member(s) 25 from the database 40 and billing information for payment of the selected offerings are electronically communicated, via the interactive communication network 50, to the intermediary 15 (specification, page 27, lines 14-17).

“electronically storing the billing information at the intermediary;”

The billing information is electronically stored at the intermediary 15 (specification, page 27, lines 17-19).

“electronically communicating the offerings selected by the members from the intermediary to the selected service provider;”

The offerings selected by the member 25 are electronically communicated (e.g.,

via a public switched telephone network 52 or via the interactive communication network 50) to the service provider 30 (specification, page 27, line 24 through page 28, line 3).

“providing a consolidated invoice from the intermediary to an organization for a plurality of offerings ordered by a plurality of members of that organization during a predetermined time period from a plurality of service providers.”

The intermediary 15 provides a consolidated invoice to the organization 20. This consolidated invoice is an invoice for a plurality of offerings ordered by a plurality of members 25 of the organization 20 during a predetermined time period from a plurality of service providers 30. In other words, the consolidated invoice is an invoice for a plurality of offerings ordered by a plurality of members 25 from a plurality of service providers 30 (specification, page 28, lines 3-8). For example, the consolidated invoice may include orders from various restaurants (service providers) ordered from during the past month by employees (members) of an accounting department of a business (organization). In another example, the consolidated invoice may include orders placed at various service providers (e.g., restaurants, florists, car rental agencies, and the like) during the previous week by various employees of a business.

Claim 2: *“collecting payment by the intermediary from the organization on the consolidated invoice;”*

The intermediary 15 may also collect payment from the organization 20 (specification, page 28, lines 13-15).

“paying of the service provider by the intermediary for all offerings ordered therefrom by the members during the predetermined time period.”

Once payment is collected by the intermediary 15, the intermediary 15 can pay the service provider(s) 30 for the offerings ordered therefrom by the members 25 of the organization 20 (specification, lines 15-19).

Claim 3: *“wherein the members are provided with an additional option of paying for the offering via one of a credit card or cash, in which instance the offering is not billed to the organization on the consolidated invoice.”*

The members 25 may be provided with the option of paying for the offering ordered via credit card or cash. In such a case, that particular offering will not be included on the consolidated invoice provided by the intermediary 15 to the organization 20. As shown in Figure 3, when the employee 25 uses a credit card to pay for the meal, additional processing software 43 associated with the intermediary 15 is may be provided to enable processing of the credit card transaction and communication with a processing server 60 of the credit card company (specification, page 28, line 20 through page 29, line 4).

Claim 4: *“the organization is a business;”*

The organization 20 may be a business (specification, page 29, lines 5-6).

“the members are employees of the business;”

The members 25 of the organization 20 may be employees of the business (specification, page 29, lines 6-7).

“the billing information includes at least one of the employees’ personal identification numbers, a specific identification number for said business, the business’ address, the business’ telephone number, and client billing codes.”

When the organization 20 is a business and the members 25 are employees, the billing information provided by the employees to the intermediary 15 may include the employee’s personal identification number, a specific identification number for the business, the address, the telephone number, and/or client billing codes (specification, page 29, lines 7-12).

Claim 5: *“the searchable database is provided in the form of a searchable web site.”*

The searchable database 40 may comprise a searchable web site (specification, page 29, lines 13-15).

Claim 6: *“wherein the service providers are restaurants, further comprising the step of:”*

The service providers 30 may be restaurants (specification, page 13, lines 19-20).

“providing at least one web page associated with each restaurant in the database, which web page displays at least one of the restaurant menu, the restaurant food type, and the restaurant specialties of the day.”

At least one web page associated with each restaurant may be provided in the database 40. The web page for each restaurant may display the menu, the food type, and/or specials of the day (specification, page 29, lines 15-19). See also, Applicants' specification at page 35, line 15 through page 38, line 15 for a discussion of a web site implementation of the present invention, including descriptions of web pages or screens made available to the employees 25.

In addition, Figure 5 shows a flowchart of the ordering process for the restaurant embodiment, described at pages 34-35 of Applicants' specification. The inputs and functions of each of the customer, the system, and the restaurant are broken down in the Figure. Initially, the employee accesses the database and enters his or her identification information (Step 111). The system then automatically retrieves all the related data according to the employee identification (e.g., organization name, delivery address, list of clients to select from, order history, etc.) (Step 112). The retrieved information is displayed on the employee's screen for verification and possible editing. The employee can search the database for a restaurant according to parameters such as: name of restaurant, type of restaurant (e.g., Chinese, kosher, vegetarian, health conscious, etc.), location, and the like (Step 113). The system returns a list of restaurants based on the

search criteria and which restaurants deliver to the employee's address (Step 114). The employee scrolls through the list of restaurants and selects the one from which he or she wishes to order (Step 115). The employee views the menu of the selected restaurant and selects the item he or she wishes to order (Step 121). The employee is able to print this screen for his or her records (Step 122). The system (intermediary) automatically sends the order, such as by fax, e-mail, or other communication to the restaurant with the order information (Step 123). The restaurant receives and processes the order and may send an e-mail, fax, or other communication to the system of the estimated time of delivery (Step 124). The restaurant delivers the meal (Step 125). The employee eats the meal (Step 126).

Claim 7: *“generating a report by the intermediary of all meals ordered by the employees during a specified time period containing at least one of order date, order time, employee name, employee's personal identification number, meal ordered, meal cost, client name, client code, and restaurant name;”*

The intermediary 15 may generate a report of all meals ordered by the employees (members 25) during a specified time period. This report may contain an order date and time, employee name, employee's personal identification number, meal ordered, meal cost, client name, client code, and/or restaurant name (specification, page 29, lines 20-26).

“forwarding the report from the intermediary to the business.”

The report may be forwarded from the intermediary 15 to the business (organization 20) (specification, page 30, lines 1-2).

Claim 8: *“the report can be sorted by at least one of order date, order time, employee name, employee's personal identification number, meal ordered, meal cost, client name, client code, and restaurant name.”*

The report provided by the intermediary 15 can be sorted by order date, order time, employee name, employee's personal identification number, meal ordered, meal cost, client name, client code, and/or restaurant name (specification, page 30, lines 3-6).

Claim 9: *"the report can be generated upon demand by the organization."*

The report can be generated on demand by the organization 20 (specification, page 30, lines 7-8).

Claim 10: *"the report is forwarded from the intermediary to the organization via one of facsimile, email, a global communication network, or said interactive communication network".*

The report provided by the intermediary 15 to the organization 20 may be forwarded via facsimile (over the public switched telephone network 52), via email (over the public switched telephone network 52 or the interactive communication network 50), via a global communication network, or via the interactive communication network 50 (specification, page 30, lines 9-13).

Claim 11: *"generating a receipt by the intermediary containing at least one of an order confirmation number, employee name, the employee's personal identification number, meal ordered, order date, order time, meal cost, client name, client code, restaurant name."*

The intermediary 15 is also capable of generating a receipt containing an order confirmation number, employee name, the employee's personal identification number, meal ordered, order date, order time, meal cost, client name, client code, and/or a restaurant name (specification, page 30, lines 15-21).

Claim 12: *"the receipt is forwarded from the intermediary to at least one of the employee, the restaurant, and the organization."*

The receipt may be forwarded from the intermediary 15 to the employee (member 25), the restaurant (service provider 30), and/or the organization 20 (specification, page 30, lines 22-24).

Claim 13: *“the receipt is forwarded from the intermediary via one of facsimile, email, a global communication network, or said interactive communication network.”*

As with the report discussed above in connection with claim 10, the receipt may be forwarded from the intermediary 15 by facsimile, email, a global communication network, or the interactive communication network 50 (specification, page 30, line 24 through page 31, line 1).

Claim 14: *“forwarding from the intermediary to the employee an estimated time of meal delivery from the restaurant to the organization.”*

The intermediary 15 may also provide the employee 25 with an estimated time of meal delivery from the restaurant 30 (specification, page 31, lines 2-5).

Claim 15: *“the database is searchable by at least one of restaurant name, food type, food preference, and restaurant location.”*

In order to assist the employee 25 in choosing and obtaining a food order, the database 40 may be searchable by restaurant name, food type, food preference, and/or restaurant location (specification, page 31, lines 8-11).

Claim 16: *“the business maintains house accounts with the restaurants;”*

The business 20 may maintain a “house account” with various restaurants 30. A house account allows employees to order food from a restaurant, and the restaurant subsequently sends the employer a bill for all the food orders (specification, page 2, lines 24-26).

“the consolidated invoice provides consolidation of amounts due on the house accounts.”

With typical prior art house accounts, the restaurant sends the employer a bill for all such food orders. The employee then provides documentation of the meals ordered to the employer. The employer, in turn, collects and organizes the relevant records and in turn bills each client for the food ordered by its employees. Further, the employer must reimburse the employee (if the employee paid for the meal) or pay the restaurants (if the employer has house accounts) (specification, page 2, line 25 through page 5, line 10, and prior art Figure 1). With the present invention, this cumbersome process is avoided, as the amounts due on any such house accounts can be included on the consolidated invoice provided to the organization 20 by the intermediary 15 (specification, page 31, lines 14-16). The intermediary 15 collects the amounts due on the consolidated invoice from the organization and pays the restaurants. The reports that can be generated by the intermediary simplify the record keeping process for the employee and the business. See also Applicants' Figure 4 and the corresponding description of Figure 4 in the specification at pages 33-34 regarding the restaurant embodiment of the present invention.

Claim 17: *“retaining a commission by the intermediary from the payment received from the organization, wherein only the balance of the payment from the organization minus the commission is forwarded by the intermediary to the service provider.”*

The intermediary 15 may retain a commission from the payment received from the organization 20 on the consolidated invoice. The balance of the payment from the organization 20 (minus the commission) may be forwarded by the intermediary 15 to the service provider 30 (specification, page 31, lines 17-24).

Claim 18: *“providing a history of previous orders by the intermediary for each member.”*

The intermediary 15 may also provide a history of previous orders for each member 25 (specification, page 31, lines 25-27).

Claim 19: *“providing real-time assistance by the intermediary to resolve problems associated with an order.”*

The intermediary 15 may provide real-time assistance to the employee 25, the organization 20, or the service provider 30 to resolve problems associated with the order (specification, page 31, line 27 through page 32, line 3).

Claim 20: *“wherein the step of providing a consolidated invoice from the intermediary to the organization is accomplished via one of facsimile, email, a global communication network, or said interactive communication network.”*

The consolidated invoice may be provided from the intermediary 15 to the organization 20 via facsimile, email, a global communication network, and/or said interactive communication network 50 (specification, page 32, lines 4-7).

Claim 21: *“A method for providing electronic commerce and accounting services to organizations and service providers for offerings ordered by members of the organizations and delivered by the service providers, comprising the steps of:*

providing said members with online access to a searchable database of said service providers with associated offerings via an interactive communication network, said searchable database being maintained by an intermediary;

enabling the members to electronically select a service provider from the database;

enabling the members to electronically select offerings from the selected service provider via the database;

enabling the members to electronically communicate the selected offerings and billing information for payment of the selected offerings to the intermediary;

electronically storing the billing information at the intermediary;

electronically communicating the offerings selected by the members from the intermediary to the selected service provider;”

The providing, enabling, storing, and communicating steps of claim 21 set forth above correspond to the providing, enabling, storing and communicating steps of claim 1 described above.

“providing a plurality of consolidated invoices from the intermediary to the organization, each of the consolidated invoices contains amounts due for a plurality of offerings ordered by a plurality of members from a particular service provider.”

The intermediary 15 may provide a plurality of consolidated invoices to the organization 20. Each of the consolidated invoices contains amounts due for a plurality of offerings ordered by a plurality of members 25 from a particular service provider 30 (specification, page 32, lines 9-13).

Claim 22: *“the consolidated invoice contains amounts due to each service provider which has been ordered from during the predetermined time period.”*

The consolidated invoice may contain amounts due to each service provider 30 which has been ordered from during the predetermined time period (specification, page 32, lines 13-16).

Claim 23: *“the service providers are providers of one of flowers, gifts, transportation, accommodations, travel arrangement, entertainment, office supplies, office copies, documents, food, or beverages.”*

The service providers 30 may be providers of flowers, gifts, transportation, accommodations, travel arrangement, entertainment, office supplies, office copies, documents, food, and/or beverages (specification, page 32, lines 17-22).

Claim 24: *“members are only allowed access to the searchable database for a pre-selected group of service providers.”*

Access to the database 40 by members 25 may be limited to a pre-selected group of service providers 30 (specification, page 32, lines 23-25).

Claim 25: *“the pre-selected group of service providers is determined based on geographic location of the organization.”*

The pre-selected group of service providers 30 that the members 25 can access on the database 40 may be determined based on geographic location of the organization 20 (specification, page 32, line 26 through page 33, line 1).

Claim 26: *“wherein the geographic location is determined by proximity to the organization.”*

The geographic location may be based on the service providers 30 proximity to the organization 20 (specification, page 33, lines 1-3).

Claim 27: *“providing for delivery of the offerings from the service provider to the members.”*

Once the order is placed and accepted via the intermediary 15, the service provider 30 provides for delivery 32 of the offerings to the members 25 of the organization 20 (specification, page 33, lines 6-8).

(6) GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

1. Whether claims 1-27 are anticipated under 35 U.S.C. § 102(b) by “common knowledge” of the Examiner.

Applicants note that in the final Office Action, the Examiner rejected claims 1-27 under 35 U.S.C. § 103(a) as being unpatentable over Purcell (US 6,081,789). However, in the Advisory Action issued on December 29, 2004, issued in response to Applicant’s Response to Final Office Action dated November 19, 2004, the Examiner withdrew the rejection based on the Purcell reference. In the Advisory Action, the Examiner indicated

that the Examiner's statement on page 3, first full paragraph of the final Office Action regarding common knowledge remains applicable as a basis for rejecting the claims.

As the referenced paragraph on page 3 of the final Office Action reads as a rejection as to novelty, Applicants will treat this rejection as a rejection under 35 U.S.C. § 102(b).

(7) ARGUMENT: DISCUSSION OF REJECTION OF CLAIMS 1-27, WHICH IS INTERPRETED HEREIN AS A REJECTION UNDER 35 U.S.C. §102(b)

The sole rejection of claims 1-27 is based on the Examiner's determination of what constitutes common knowledge in the art. As indicated in the Advisory Action and discussed above, the Examiner has withdrawn the rejection of claims 1-27 based on U.S. patent no 6,081,789 to Purcell. In the Advisory Action, the Examiner indicated that the Examiner's statement on page 3, first full paragraph of the final Office Action regarding common knowledge remains applicable as a basis for rejecting the claims.

The first full paragraph on page 3 of the final Office Action reads as follows:

Also, it is noted that Applicant's concept reads upon the common knowledge concept of several employee of an organization going to a retail outlet over a period of time, e.g., a monthly billing cycle, having a plurality of products of a separate merchant for sale. The employees may have had previous electronic contact with the merchants prior to selecting the product(s) from the retail outlet using the organizations credit/debit card. The employees then purchase (a) merchants product(s) from the retail outlet using the organizations credit/debit card. The accumulated purchases from the credit/debit card are collated by the retail outlet and presented to the organization for payment. This concept is not deemed novel.

An anticipation rejection requires that each and every element of the claimed invention as set forth in the claim be provided in the cited reference. See *Akamai Technologies Inc. v. Cable & Wireless Internet Services Inc.*, 68 USPQ2d 1186 (CA FC 2003), and cases cited therein (see also, MPEP § 2131).

As discussed in detail below, the common knowledge relied on by the Examiner does not meet the requirements for an anticipation rejection.

(7)(1) Claims 1-27 Are Not Anticipated Under 35 U.S.C. § 102(b) By The Examiner's Recitation Of What Constitutes Common Knowledge

Applicants respectfully submit that the Examiner's rejection is based on a misunderstanding of Applicants' claimed invention and/or an improper determination of what constitutes common knowledge. The claimed invention relates to methods for electronic commerce and accounting services, whereby a third party intermediary handles certain ordering, payment, collection and billing functions on behalf of both (i) an organization, and (ii) a plurality of service providers that provide services to members of the organization.

Applicants' claimed invention is neither anticipated nor rendered obvious in view of the Examiner's common knowledge of how a corporate credit card works. Applicants' claimed invention relates to an electronic commerce method, and as such the members of an organization (e.g., employees) place orders online, and not by going into a retail establishment as indicated by the Examiner.

Further, no "previous electronic contact with the merchant" is necessary or provided with Applicants' claimed invention as apparently believed by the Examiner. With Applicants' claimed invention, the members deal with the intermediary only. In particular, with Applicants' claimed invention, orders are placed by the members via online access to a database provided by the intermediary. Selected offerings are communicated to the intermediary, together with billing information. The intermediary then communicates the selected offerings to the selected service provider. A consolidated invoice is then provided by the intermediary to the organization. Thus, contrary to the Examiner's assertions, with Applicants' claimed invention, there is no direct contact (electronic or otherwise) between the member and the service provider, other than the delivery of the offerings by the service provider to the member at the conclusion of the process.

In addition, the Examiner indicates that common knowledge includes knowledge that a retail establishment has “a plurality of products of a separate merchant for sale.” Applicants do not disagree that a merchant’s retail establishment typically has a plurality of products for sale by that merchant. However, such common knowledge is not equivalent to the subject matter set forth in Applicants’ claims. In Applicants’ claims, the members are provided online access to an online database of multiple service providers, each of which has associated offerings for sale.

The Examiner has also attempted to equate a credit card company that issues a corporate credit card with Applicants’ claimed intermediary. However, the handling of corporate credit cards by a credit card company is an entirely different process than that provided by Applicants’ invention. A credit card company clearly does not act as an intermediary as set forth in Applicants’ claims. The credit card company merely provides credit, allowing an individual to purchase goods and services that are paid for later. The credit card company does not provide members with online access to a searchable database of service providers, as claimed by Applicants, nor does the credit card company maintain such a database. The credit card company does not enable members (purchasers) to electronically select a service provider from a database; instead, the purchaser selects the service provider directly, and then chooses a credit card to use when consummating a purchase. Members do not electronically communicate selected offerings and billing information to the credit card company, as is the case with Applicants’ claimed intermediary. The credit card company does not electronically communicate the offerings selected by the members to the service provider, as does Applicants’ claimed intermediary. A credit card company does not even know (or care) what a purchaser has ordered; it only receives the billed amount from the vendor! These and other elements of Applicants’ claims are not provided by credit card companies, and are certainly not part of the common knowledge relied on by the Examiner.

Moreover, Applicants’ claimed invention actually obviates the use of a corporate credit card. With Applicants’ invention, no credit card is used to place the online order. Rather, when placing orders, the members transmit billing information (e.g., such as PIN

numbers, business identification, address, telephone number, and/or client billing codes) to the intermediary. The intermediary then forwards the order to the service provider, and the service provider fulfills the order. The intermediary later generates a consolidated invoice from the orders it has forwarded to service providers for a particular organization during a given time period. Thereafter, the intermediary collects payment from the organization and pays the service provider(s). The common knowledge relied on by the Examiner teaches away from Applicants' claimed invention, because it requires the service provider to take orders directly, and then ask for payment from the credit card company.

(7)(1.1) Examiner's Sole Reliance On Common Knowledge As A Basis For Final Rejection Is Improper

As discussed in the Manual of Patent Examining Procedure (MPEP) section 2144.03, official notice without documentary evidence to support an examiner's conclusion is permissible only in some circumstances. While "official notice" may be relied on, these circumstances should be rare when an application is under final rejection or action under 37 CFR 1.113. Official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art, are capable of instant and unquestionable demonstration as being well-known. *In re Ahlert*, 165 USPQ 418, 420 (CCPA 1970).

Further, it is never appropriate to rely solely on "common knowledge" in the art without evidentiary support in the record, as the principle evidence upon which a rejection was based. *In re Zurko*, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001).

Here, the sole basis for rejecting claims 1-27 is the Examiner's assertion of what constitutes common knowledge. The Examiner has not provided any evidentiary support in the record. In particular, the Examiner has not relied on any publications in his rejections based on common knowledge and has not provided any dates regarding the recited common knowledge.

Accordingly, the Examiner's his final rejection based solely on common knowledge is improper

(7)(1.2) Discussion Of Final Office Action And Independent Claim 1

Claim 1 specifies: *A method for providing electronic commerce and accounting services to organizations and service providers for offerings ordered by members of the organizations and delivered by the service providers, comprising the steps of:*

- *providing said members with online access to a searchable database of said service providers with associated offerings via an interactive communication network, said searchable database being maintained by an intermediary;*
- *enabling the members to electronically select a service provider from the database;*
- *enabling the members to electronically select offerings from the selected service provider via the database;*
- *enabling the members to electronically communicate the selected offerings and billing information for payment of the selected offerings to the intermediary;*
- *electronically storing the billing information at the intermediary;*
- *electronically communicating the offerings selected by the members from the intermediary to the selected service provider; and*
- *providing a consolidated invoice from the intermediary to an organization for a plurality of offerings ordered by a plurality of members of that organization during a predetermined time period from a plurality of service providers.*

Does the common knowledge relied on by the Examiner disclose providing said members of an organization with online access to a searchable database of said service providers with associated offerings via an interactive communication network, said searchable database being maintained by an intermediary?

The Examiner indicates that it is common knowledge for several employees (e.g., a members of an organization) to go to a retail outlet over a period of time, such as a monthly billing cycle, having a plurality of products of a separate merchant for sale. Applicants respectfully submit that the Examiner has misunderstood Applicants' claim language. With Applicants' invention, the members of the organization are provided online access to a searchable database of service providers and their associated offerings. The provision of an online searchable database of service providers with associated offerings to members of an organization is not equivalent to employees walking into a retail outlet which sells a plurality of products from a single merchant, as apparently assumed by the Examiner in his indication of what constitutes common knowledge.

Further, the online access to the searchable database claimed by Applicants is provided by an intermediary over an interactive communication network. No intermediary is present when employees go to a retail outlet over a period of time. Similarly, no interactive communication network is used when employees go into a retail outlet.

Accordingly, the common knowledge relied on by the Examiner does not disclose or remotely suggest providing members of an organization with online access to a searchable database of said service providers with associated offerings via an interactive communication network, said searchable database being maintained by an intermediary, as claimed by Applicant.

Does the common knowledge relied on by the Examiner disclose enabling the members to electronically select a service provider from the database provided by the intermediary?

The Examiner did not disclose any common knowledge that indicates that members of the organization can electronically select a service provider from a database of service providers provided by the intermediary.

The Examiner indicates only that it is common knowledge for employees that go into a retail outlet to have had previous electronic contact with the merchants prior to

selecting their product(s). Applicants' concede that it is common knowledge for shoppers to have had electronic contact with merchants prior to making a purchase, such as conducting online research of products on a merchant's web site. However, this is not the same as an intermediary providing a single database of multiple service providers and their associated offerings and enabling a member of an organization to electronically select a service provider from that database.

It should be appreciated that the intermediary claimed by Applicants is a third party that facilitates the transaction between the service provider and the members, and as such the database provided by the intermediary, which includes multiple service providers and their products, is not equivalent to a single merchant's web page describing that merchant's products.

Accordingly, the common knowledge relied on by the Examiner does not disclose or remotely suggest enabling the members to electronically select a service provider from the database provided by the intermediary, as claimed by Applicants.

Does the common knowledge relied on by the Examiner disclose enabling the members to electronically select offerings from the selected service provider via the database provided by the intermediary?

The Examiner has not disclosed any common knowledge that indicates that members of an organization can electronically select offerings from a selected service provider via the database. As discussed above, Applicants' agree that shoppers may have previous electronic contact with a merchant before physically visiting their store. However, this contact is not equivalent to enabling electronic selection of offerings from a selected service provider via online access to a searchable database provided by an intermediary, as claimed by Applicants.

Accordingly, the common knowledge relied on by the Examiner does not disclose or remotely suggest enabling the members to electronically select offerings from the selected service provider via the database provided by the intermediary, as claimed by Applicants.

Does the common knowledge relied on by the Examiner disclose enabling the members to electronically communicate the selected offerings and billing information for payment of the selected offerings to the intermediary?

The Examiner indicates that it is common knowledge for employees to purchase products from a merchant's retail outlet using an organization's credit or debit card. However, this is not equivalent to electronically communicating selected offerings (which have been selected from an online database) and billing information to an intermediary, as claimed by Applicants. The Examiner's recitation of what constitutes "common knowledge" makes no reference to electronically communicating selected offerings and billing information to an intermediary. The common knowledge relied on by the Examiner appears to be based on what happens when an employee of an organization walks into a retail establishment and makes a purchase in person using a corporate credit card.

The common knowledge relied on by the Examiner does not disclose or remotely suggest enabling the members to electronically communicate the selected offerings and billing information for payment of the selected offerings to an intermediary, as claimed by Applicants.

Does the common knowledge relied on by the Examiner disclose electronically storing the billing information at the intermediary?

The Examiner has not disclosed any common knowledge indicating that billing information, communicated electronically to the intermediary, is stored at the intermediary. The intermediary claimed by Applicants is not equivalent to a credit card company as is apparently assumed by the Examiner. Applicants' claimed intermediary provides the online database of service providers and their offerings to the members to enable the members to make a selection, receives electronic communications from the members with their selected offerings and billing information, stores the billing information, electronically communicates the selected offerings to the service providers,

and provides a consolidated invoice to the organization. One skilled in the art would appreciate that a typical credit card company does not provide such services, particularly in the combination as claimed.

Applicants' claimed intermediary acts as a go-between or mediator that facilitates an electronic transaction between a service provider and an organization. Common knowledge dictates that a credit card company does not act as an intermediary, since its function is to enable payment to the service provider at the end of the purchase transaction, i.e., after the employee has brought his selection to the register in the retail outlet example proffered by the Examiner.

Does the common knowledge relied on by the Examiner disclose electronically communicating the offerings selected by the members from the intermediary to the selected service provider?

The Examiner has not disclosed any common knowledge that indicates that the members' selected offerings are electronically communicated to the selected service provider by the intermediary. With a typical corporate credit card scenario as relied on by the Examiner, the order is typically communicated from the service provider to the credit card company. Contrary to the typical credit card scenario, with Applicants' claimed invention the selected offering is communicated from the intermediary to the service provider. Assuming *arguendo* that a credit card company is a sort of intermediary, one skilled in the art would appreciate that the credit card company receives information about a purchase from the service provider, and not *vice versa*.

Accordingly, the common knowledge relied on by the Examiner does not disclose or remotely suggest electronically communicating the offerings selected by the members from the intermediary to the selected service provider, as claimed by Applicants.

Does the common knowledge relied on by the Examiner disclose providing a consolidated invoice from the intermediary to an organization for a plurality of

offerings ordered by a plurality of members of that organization during a predetermined time period from a plurality of service providers?

The Examiner indicates that it is common knowledge that “*accumulated purchases from the credit/debit card are collated by the retail outlet and presented to the organization for payment.*” Applicants respectfully submit that the Examiner’s statement in this regard is confusing: If the Examiner is asserting that it is the retail outlet that collates the accumulated purchases, Applicants submit that the Examiner’s understanding of how a corporate credit card works is incorrect. It is the credit card company that accumulates the purchases and presents them to the organization. If the Examiner means to indicate that it is common knowledge for a credit card company to organize purchases on the credit card bill by retail outlet, Applicants would respectfully disagree. Rather, it is common knowledge for a credit card company to present a bill that includes purchases listed in chronological order.

Applicants respectfully submit that, regardless of the intent of the Examiner’s statement regarding common knowledge of a credit card bill, a credit card bill for a corporate credit card is not equivalent to Applicants’ claimed consolidated invoice. Applicants’ claimed consolidated invoice is provided from the intermediary to the organization. As shown above, the intermediary claimed by Applicants is not equivalent to a credit card company.

Further, the consolidated invoice is for a plurality of offerings ordered by a plurality of members of that organization during a predetermined time period from a plurality of service providers. Since Applicants’ consolidated invoice is for a plurality of offerings ordered by a plurality of members during a predetermined time period, the consolidated invoice may include, for example, many orders made by different members from a single restaurant on the same or separate days, many orders from multiple restaurants on the same or separate days, or a combination thereof. The advantage to receiving a consolidated invoice as provided by the present invention is that the organization need only pay the single invoice, rather than deal with multiple invoices from a single service provider or multiple invoices from multiple service providers.

With the present invention, the intermediary provides a centralized resource in the form of an online searchable database for a member, such as an employee of a corporation, to order goods or services, such as meals, from a service provider, such as a restaurant. The intermediary also absorbs payment, collection and invoicing functions on behalf of the organizations and the service providers. Although a credit card company provides an invoice containing all purchases made within a certain time period (e.g., a month), the typical credit card company does not act as an intermediary and therefore does not provide any of the forgoing advantages of the present invention.

As the common knowledge relied on by the Examiner does not disclose each and every element of the invention as claimed in claim 1, the rejection of claim 1 as being anticipated is believed to be improper, and reversal of the rejection is respectfully requested. See, *Akamai Technologies Inc., supra*.

(7)(1.3) Discussion Of Final Office Action And Independent Claim 21

Claim 21 is an independent claim which specifies: *A method for providing electronic commerce and accounting services to organizations and service providers for offerings ordered by members of the organizations and delivered by the service providers.*

The method of independent claim 21 includes the steps of:

- *providing said members with online access to a searchable database of said service providers with associated offerings via an interactive communication network, said searchable database being maintained by an intermediary;*
- *enabling the members to electronically select a service provider from the database;*
- *enabling the members to electronically select offerings from the selected service provider via the database;*
- *enabling the members to electronically communicate the selected offerings and billing information for payment of the selected offerings to the intermediary;*
- *electronically storing the billing information at the intermediary;*

- *electronically communicating the offerings selected by the members from the intermediary to the selected service provider; and*
- *providing a plurality of consolidated invoices from the intermediary to the organization, each of the consolidated invoices contains amounts due for a plurality of offerings ordered by a plurality of members from a particular service provider.*

The providing step, the enabling steps, the electronically storing step, and the electronically communicating step are identical to the corresponding steps of claim 1. As discussed above in connection with claim 1, the common knowledge relied on by the Examiner does not disclose or remotely suggest any of these claimed steps.

Does the common knowledge relied on by the Examiner disclose providing a plurality of consolidated invoices from the intermediary to the organization, each of the consolidated invoices contains amounts due for a plurality of offerings ordered by a plurality of members from a particular service provider?

The Examiner did not specifically address independent claim 21 in the final Office Action or the Advisory Action. In particular, the Examiner did not refer to any common knowledge that purportedly discloses providing a plurality of consolidated invoices from an intermediary to the organization. With Applicants' claimed invention as set forth in claim 21, each of the plurality of consolidated invoices is for amounts due to a particular service provider ordered from. For example, one consolidated invoice may be for offerings ordered by different members of the organization from a particular restaurant, another invoice may be for offerings ordered by the members from a particular car service, and another invoice may be for offerings ordered by members from a particular office supply store.

A typical credit card company (which as discussed above is not equivalent to Applicants' claimed intermediary) provides only a single invoice. Further, as discussed

above in connection with claim 1, a typical credit card company does not act as an intermediary between the service provider and the organization.

Accordingly, the common knowledge relied on by the Examiner does not disclose or remotely suggest providing a plurality of consolidated invoices from the intermediary to the organization, each of the consolidated invoices contains amounts due for a plurality of offerings ordered by a plurality of members from a particular service provider, as claimed by Applicants.

As the common knowledge relied on by the Examiner does not disclose each and every element of the invention as claimed in claim 21, the rejection of claim 21 as being anticipated is believed to be improper, and reversal of the rejection is respectfully requested. See, *Akamai Technologies Inc., supra*.

(7)(1.4) Discussion Of Final Office Action And Applicants' Dependent Claims

The Examiner did not specifically address any of Applicants' dependent claims in the final Office Action or the Advisory Action.

For example, the Examiner has not indicated any common knowledge that discloses or suggests:

- an intermediary that collects payment from the organization on the consolidated invoice and in turn pays the service provider, as set forth in Applicants' claim 2.
- providing the members with an option of paying for the selected offering via credit card or cash, such that the offering is not billed to the organization on the consolidated invoice, as set forth in Applicants' claim 3.
- that the searchable database is provided in the form of a searchable web site, as set forth in claim 5.
- that the service providers are restaurants, and at least one web page is associated with each restaurant in the database, each web page displaying at least one of a menu, restaurant food type, and specialties of the day, as set forth in claim 6.

- that the intermediary retains a commission from the payment received from the organization, and forwards the balance of the payment to the service provider, as set forth in claim 17.
- that the service providers are providers of one of flowers, gifts, transportation, accommodations, travel arrangement, entertainment, office supplies, office copies, documents, food, or beverages, as set forth in claim 23.
- that members of the organization are only allowed access to the searchable database for a per-selected group of service providers, as set forth in claim 24.

The Examiner did not address the subject matter of these dependent claims (or any of Applicants' other dependent claims), and Applicants respectfully submit such features are not commonly known from the typical workings of a corporate credit card.

Applicants' dependent claims are not argued further at this time since the Examiner did not specifically address them in the final Office Action or the Advisory Action. Applicants reserve the right to argue any of the pending dependent claims in Reply to the Examiner's Answer to this Appeal Brief.

As the common knowledge relied on by the Examiner does not disclose each and every element of the invention as claimed in Applicants' dependent claims, the rejection of the dependent claims as being anticipated is believed to be improper, and reversal of the rejection is respectfully requested. See, *Akamai Technologies Inc.*, *supra*.

Further remarks regarding the asserted relationship between Applicants' claims and the prior art are not deemed necessary, in view of the foregoing discussion. Applicants' silence as to any of the Examiner's comments is not indicative of an acquiescence to the stated grounds of rejection.

(8) CONCLUSION

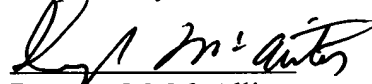
As discussed above, the common knowledge which forms the sole remaining basis for the Examiner's rejection of claims 1-27 does not disclose or remotely suggest an intermediary which provides the functions as claimed by Applicants. In particular, the

intermediary claimed by Applicants is not simply providing a credit card bill, as is apparently assumed by the Examiner on page 3 of the final Office Action. The intermediary claimed by Applicant not only provides the consolidated invoice, but also (1) provides the searchable database containing the service providers and their offerings which can be selected by the members, (2) receives the selected offerings and billing information from the members, (3) stores the billing information, and (4) communicates the offerings selected by the members to the selected service provider. These services provided by Applicants' intermediary are not part of a typical credit card processing cycle.

Further, the Examiner has impermissibly relied on common knowledge as the sole basis for a final rejection, without providing any documentary support therefore (MPEP § 2144.03).

In view of the above, reversal of the rejections set forth in the final Office Action is respectfully requested.

Respectfully submitted,



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Date: March 18, 2005

(9) CLAIMS APPENDIX

The claims involved in the appeal, namely claims 1-27, are as follows:

1. A method for providing electronic commerce and accounting services to organizations and service providers for offerings ordered by members of the organizations and delivered by the service providers, comprising the steps of:

providing said members with online access to a searchable database of said service providers with associated offerings via an interactive communication network, said searchable database being maintained by an intermediary;

enabling the members to electronically select a service provider from the database;

enabling the members to electronically select offerings from the selected service provider via the database;

enabling the members to electronically communicate the selected offerings and billing information for payment of the selected offerings to the intermediary;

electronically storing the billing information at the intermediary;

electronically communicating the offerings selected by the members from the intermediary to the selected service provider; and

providing a consolidated invoice from the intermediary to an organization for a plurality of offerings ordered by a plurality of members of that organization during a predetermined time period from a plurality of service providers.

2. A method in accordance with claim 1, comprising the further steps of:

collecting payment by the intermediary from the organization on the consolidated invoice;

paying of the service provider by the intermediary for all offerings ordered therefrom by the members during the predetermined time period.

3. A method in accordance with claim 1, wherein the members are provided with an additional option of paying for the offering via one of a credit card or cash, in which instance the offering is not billed to the organization on the consolidated invoice.

4. A method in accordance with claim 1, wherein:

the organization is a business;

the members are employees of the business; and

the billing information includes at least one of the employees' personal identification numbers, a specific identification number for said business, the business' address, the business' telephone number, and client billing codes.

5. A method in accordance with claim 4, wherein the searchable database is provided in the form of a searchable web site.

6. A method in accordance with claim 5, wherein the service providers are restaurants, further comprising the step of:

providing at least one web page associated with each restaurant in the database, which web page displays at least one of the restaurant menu, the restaurant food type, and the restaurant specialties of the day.

7. A method in accordance with claim 6, further comprising the steps of:

generating a report by the intermediary of all meals ordered by the employees during a specified time period containing at least one of order date, order time, employee name, employee's personal identification number, meal ordered, meal cost, client name, client code, and restaurant name; and

forwarding the report from the intermediary to the business.

8. A method in accordance with claim 7, wherein the report can be sorted by at least one of order date, order time, employee name, employee's personal identification number, meal ordered, meal cost, client name, client code, and restaurant name.

9. A method in accordance with claim 7, wherein the report can be generated upon demand by the organization.

10. A method in accordance with claim 7, wherein the report is forwarded from the intermediary to the organization via one of facsimile, email, a global communication network, or said interactive communication network.

11. A method in accordance with claim 6, further comprising the step of:

generating a receipt by the intermediary containing at least one of an order confirmation number, employee name, the employee's personal identification number, meal ordered, order date, order time, meal cost, client name, client code, restaurant name.

12. A method in accordance with claim 11, wherein the receipt is forwarded from the intermediary to at least one of the employee, the restaurant, and the organization.

13. A method in accordance with claim 11, wherein the receipt is forwarded from the intermediary via one of facsimile, email, a global communication network, or said interactive communication network.

14. A method in accordance with claim 6, further comprising the steps of:

forwarding from the intermediary to the employee an estimated time of meal delivery from the restaurant to the organization.

15. A method in accordance with claim 6, wherein the database is searchable by at least one of restaurant name, food type, food preference, and restaurant location.

16. A method in accordance with claim 6, wherein:

the business maintains house accounts with the restaurants; and
the consolidated invoice provides consolidation of amounts due on the house accounts.

17. A method in accordance with claim 2, further comprising the step of:

retaining a commission by the intermediary from the payment received from the organization, wherein only the balance of the payment from the organization minus the commission is forwarded by the intermediary to the service provider.

18. A method in accordance with claim 1, further comprising the step of:

providing a history of previous orders by the intermediary for each member.

19. A method in accordance with claim 1, further comprising the step of:

providing real-time assistance by the intermediary to resolve problems associated with an order.

20. A method in accordance with claim 1, wherein the step of providing a consolidated invoice from the intermediary to the organization is accomplished via one of facsimile, email, a global communication network, or said interactive communication network.

21. A method for providing electronic commerce and accounting services to organizations and service providers for offerings ordered by members of the organizations and delivered by the service providers, comprising the steps of:

providing said members with online access to a searchable database of said service providers with associated offerings via an interactive communication network, said searchable database being maintained by an intermediary;

enabling the members to electronically select a service provider from the database;

enabling the members to electronically select offerings from the selected service provider via the database;

enabling the members to electronically communicate the selected offerings and billing information for payment of the selected offerings to the intermediary;

electronically storing the billing information at the intermediary;

electronically communicating the offerings selected by the members from the intermediary to the selected service provider; and

providing a plurality of consolidated invoices from the intermediary to the organization, each of the consolidated invoices contains amounts due for a plurality of offerings ordered by a plurality of members from a particular service provider.

22. A method in accordance with claim 1, wherein the consolidated invoice contains amounts due to each service provider which has been ordered from during the predetermined time period.

23. A method in accordance with claim 1, wherein the service providers are providers of one of flowers, gifts, transportation, accommodations, travel arrangement, entertainment, office supplies, office copies, documents, food, or beverages.

24. A method in accordance with claim 1, wherein the members are only allowed access to the searchable database for a pre-selected group of service providers.

25. A method in accordance with claim 24, wherein the pre-selected group of service providers is determined based on geographic location of the organization.

26. A method in accordance with claim 25, wherein the geographic location is determined by proximity to the organization.

27. A method in accordance with claim 1, further comprising the step of providing for delivery of the offerings from the service provider to the members.